IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6025 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANYONYA SAHAYAKARI MANDALI COOPERATIVE BANK LTD.

Versus

SHAH MADHUSUDHAN CHIMANLAL

Appearance:

1. Special Civil Application No. 6025 of 1995

MR BS PATEL for Petitioner No. 1

MR BG JANI for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 26/06/2003

ORAL JUDGEMENT

The petitioner, in this petition under Article 227 of the Constitution of India, has challenged order dated 7.12.94 passed by the Gujarat State Cooperative Tribunal, Ahmedabad, in Appeal No. 422 of 1993 whereby the award dated 28.7.1989 passed by the Board of Nominees by holding that original-defendants No. 2 and 3 were

liable to pay a sum of Rs. 34,010.84 ps. which was due on 31.10.94 and from that date onwards the original-defendants No. 2 and 3 were required to pay interest at the rate of 14% p.a. to the original-plaintiff.

2. Heard Mr. BS Patel, learned advocate appearing for the petitioner and Mr. BG Jani, learned advocate appearing for the respondents. Mr. Patel has invited my attention to the Tribunal's order dated 7.12.1994 whereby the Tribunal modified the award passed by the Nominee Court and the Tribunal has directed the parties to submit statement of account considering the rate of interest as mentioned in the promissory notes and in the documents. Copies of the promissory notes are annexed at pages 15 and 16 to the petition. As far as promissory note dated 2.1.1984 is concerned, it was of Rs. 46,000/= and interest thereon would be charged at the rate of 13 1/2% p.a. with yearly rests. As far as promissory note dated 2.5.84 is concerned, it is of Rs. 4,000/= and interest thereon would be charged at 14% p.a. with yearly rests. Hence, as per the agreement arrived at between the parties before the Tribunal, the interest was to be charged on Rs. 46,000/- at the rate of 13 1/2% p.a. with yearly rests and the interest was to be charged on Rs. 4,000/= at the rate of 14% p.a. with yearly rests. Pursuant to this agreement, the Chartered Accountant's certificate is produced before the Bank wherein it was mentioned that interest was to be calculated at the simple rate of 14% p.a. and the Tribunal has accordingly passed the impugned order. Mr. Patel has submitted that there is an obvious error committed by the Chartered Accountant while tendering the certificate and on the basis of that certificate the order was passed by the Tribunal and the present petition is filed against the said order passed by the Tribunal.

3. Earlier, this Court has passed an order on 13.2.2003 whereby the statement made by Mr. Jani on behalf of the respondent is recorded and it was observed that the respondent shall be ready and willing to settle the accounts, and learned advocate Mr. BS Patel stated that the petitioner shall produce the updated accounts on the records of the matter. Pursuant to this order dated 13.2.2003, an additional affidavit was filed on 18th February 2003 along with which a detailed statement of account was filed and as per the said statement an amount of Rs. 1,33,493.82 ps. is outstanding. Along with that additional affidavit, as per RBI's formula, one time settlement plan was also filed. Mr. Jani has further submitted that in the appeal memo before the Tribunal the

respondent has raised the contention that the Bank may be directed to calculate the simple interest on the amount outstanding. Mr. Jani, therefore, submitted that his client would like to take advantage of the one-time settlement formula and accordingly the present petition may be disposed of by giving directions to the petitioner Bank to consider the case of the respondent in view of the one-time settlement.

4. After having heard the learned advocates appearing for the parties and after considering the documents before me, I am of the view that an error is committed by the Tribunal in its order which is required to be corrected. This Court, however, does not express any opinion as the parties would like to settle the matter following the one-time settlement formula. It is open for the respondent to approach the Bank and request them to adopt the one-time settlement formula for settlement of account including the interest amount on the outstanding amount, and if such a request is made by the respondent before the petitioner Bank under the scheme of one-time settlement, the petitioner Bank would consider the same sympathetically and appropriate decision will be taken in the matter.

5. In view of the aforesaid observations and directions, this Special Civil Application is disposed of. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]